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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/960,665	09/21/2001	Neal Rosen	MSK.P-038-2	5586
52334	7590	12/14/2006	EXAMINER	
Marina Larson & Associates LLC re: MSK P. O. BOX 4928 DILLON, CO 80435-4928			KIFLE, BRUCK	
			ART UNIT	PAPER NUMBER
			1624	

DATE MAILED: 12/14/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Advisory Action After the Filing of an Appeal Brief	Application No. 09/960,665 Examiner Bruck Kifle, Ph.D.	Applicant(s) ROSEN ET AL. Art Unit 1624
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--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

The reply filed 28 September 2006 is acknowledged.

1. The reply filed on or after the date of filing of an appeal brief, but prior to a final decision by the Board of Patent Appeals and Interferences, will not be entered because:
 - a. The amendment is not limited to canceling claims (where the cancellation does not affect the scope of any other pending claims) or rewriting dependent claims into independent form (no limitation of a dependent claim can be excluded in rewriting that claim). See 37 CFR 41.33(b) and (c).
 - b. The affidavit or other evidence is not timely filed before the filing of an appeal brief. See 37 CFR 41.33(d)(2).
2. The reply is not entered because it was not filed within the two month time period set forth in 37 CFR 41.39(b), 41.50(a)(2), or 41.50(b) (whichever is appropriate). Extensions of time under 37 CFR 1.136(a) are not available.

Note: This paragraph is for a reply filed in response to one of the following: (a) an examiner's answer that includes a new ground of rejection (37 CFR 41.39(a)(2)); (b) a supplemental examiner's answer written in response to a remand by the Board of Patent Appeals and Interferences for further consideration of rejection (37 CFR 41.50(a)(2)); or (c) a Board of Patent Appeals and Interferences decision that includes a new ground of rejection (37 CFR 41.50(b)).

3. The reply is entered. An explanation of the status of the claims after entry is below or attached.
4. Other: _____

Advisory Action

Applicant's brief have been fully considered and are persuasive. The rejections of the claims under 35 USC 112 have been withdrawn after an appeal's conference in the work group.

Claims 35-66 remain provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 3, 4, 6 and 9-34 of copending Application No. 09/937,192. Applicants state that this issue is not contested and that a terminal disclaimer will be filed.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Bruck Kifle, Ph.D. whose telephone number is 571-272-0668. The examiner can normally be reached Mondays to Fridays between 8:30 AM and 6:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mr. James Wilson can be reached on 571-272-0661. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Bruck Kifle, Ph.D.
Primary Examiner
Art Unit 1624

BK
December 8, 2006